

Message Text

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ORIGIN SNM-05

INFO OCT-01 ARA-10 EUR-12 ISO-00 L-03 DEAE-00 CTME-00
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DRAFTED BY S/NM:MLCHESHES/USCG/CDR. A.BLANTON:OSD
APPROVED BY S/NM:MFALCO
L/OES:MCCLLOUD
DEA:REYMAN/RICHARDSON
CUSTOMS:SSEIDEL
L/SFP:LFIELDS
OES:GNELSON
JUSTICE:WLYNCH
ARA/RPP:EPERREAUULT
S/S-O:LFLEISCHER
DESIRED DISTRIBUTION
JUSTICE, DEA, CUSTOMS, INS, COAST GUARD
-----075418 220637Z /13

R 210935Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY BOGOTA
AMEMBASSY CARACAS
AMCONSUL CURACAO
AMEMBASSY GUATEMALA
AMEMBASSY KINGSTON
AMEMBASSY LONDON
AMEMBASSY NASSAU
AMEMBASSY PANAMA
AMEMBASSY PORT AU PRINCE
AMEMBASSY PORT OF SPAIN
AMEMBASSY SANTO DOMINGO
INFO AMCONSUL BELIZE
AMCONSUL BARRANQUILLA
USINT HAVANA
AMEMBASSY MANAGUA
AMEMBASSY SAN JOSE
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AMEMBASSY THE HAGUE
AMEMBASSY GEORGETOWN
COMLATAREA COGARD NY
COAST GUARD WASHDC 0000
CCGDSEVEN MIAMI
CCGDEIGHT NEW ORLEANS LA

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E.O. 11652: N/A

TAGS: SNAR

SUBJECT: U.S. COAST GUARD EFFORTS TO SUPPRESS DRUG
TRAFFICKING

1. AS A PART OF THE PRESIDENTIALLY-DIRECTED CAMPAIGN AGAINST DRUG ABUSE, THE COAST GUARD HAS, FOR SEVERAL YEARS, BEEN MAKING A CONCENTRATED, AND INCREASINGLY SUCCESSFUL, EFFORT TO INTERDICT VESSELS ENGAGED IN INTERNATIONAL DRUG TRAFFIC BOUND FOR THE UNITED STATES. A LARGE PROPORTION OF THE VESSELS INTERDICTED ARE UNITED STATES VESSELS AND THUS THEIR SEIZURE DOES NOT INVOLVE ANY SIGNIFICANT PROBLEMS FOR EMBASSIES ABROAD. HOWEVER, THERE IS ALSO A LARGE CONTINGENT OF FOREIGN VESSELS ENGAGED IN THE ILLICIT TRAFFIC, AND INTERDICTION AND SEIZURE OF THESE VESSELS BY THE U.S. COAST GUARD DOES GIVE RISE TO ISSUES OF FACT AND POLICY WHICH COME UNDER THE COGNIZANCE OF THE DEPARTMENT. UNDER SOME CIRCUMSTANCES, USG LAW ENFORCEMENT ACTIONS WITH RESPECT TO FOREIGN VESSELS REQUIRE COORDINATION WITH OR AUTHORIZATION FROM THE VESSEL'S FLAG STATE. UP TO NOW, OUR APPROACHES TO THE AFFECTED GOVERNMENTS HAVE BEEN ON AN AD LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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HOC BASIS. BECAUSE OF THE DELAYS AND DIFFICULTIES ENCOUNTERED IN PAST CASES (NOT TO MENTION PROBLEMS FOR OUR EMBASSY, LIKE GETTING HOLD OF SOMEONE IN THE MIDDLE OF THE NIGHT), THE DEPARTMENT HAS DECIDED TO ATTEMPT TO REGULARIZE

PROCEDURES THROUGH A SERIES OF AGREEMENTS OR UNDERSTANDINGS WITH THOSE COUNTRIES WHOSE FLAG IS MOST OFTEN FOUND FLYING ON TRAFFICKING VESSELS. THE PURPOSE OF THIS CABLE IS TO BRIEF YOU ON THE RELEVANT ISSUES AND TO POINT OUT STEPS THAT YOU SHOULD TAKE IN ORDER TO (1) FACILITATE THE DISCUSSIONS LEADING TO AN UNDERSTANDING ON THIS MATTER WITH YOUR HOST GOVERNMENT; AND (2) EXPEDITE AD HOC ARRANGEMENTS SHOULD A CASE ARISE BEFORE AN AGREEMENT IS IN PLACE.

2. ONCE DEPARTMENT AND OTHER INTERESTED AGENCIES HAVE RECEIVED AND STUDIED MATERIAL REQUESTED BELOW, A TEAM OF LEGAL AND OTHER REPRESENTATIVES OF STATE AND APPROPRIATE AGENCIES WILL TRAVEL TO SELECTED ADDRESSEES TO OPEN TALKS WITH HOST GOVERNMENTS. APPROACHES CONCERNING SPECIFIC FOREIGN VESSELS WILL CONTINUE ON AN AD HOC BASIS UNTIL STANDING PROCEDURES ARE ESTABLISHED.

3. MOST OF THE CONTRABAND INTERDICTED BY THE COAST GUARD'S PATROLS CONSISTS OF MARIJUANA SHIPPED FROM COLOMBIA; INTELLIGENCE SOURCES IN COLOMBIA AND ELSEWHERE ACKNOWLEDGE

THAT COCAINE IS BEING SHIPPED BY THE SAME ROUTE. AS A
GLANCE AT A MAP OF THE AREA BETWEEN FLORIDA AND SOUTH
AMERICA WILL SHOW, THE MOST DIRECT ROUTES FOR THE TRAF-
FICKERS INCLUDE PASSAGE THROUGH ONE OF THREE STRAITS: THE
YUCATAN STRAIT WEST OF CUBA; THE WINDWARD PASSAGE EAST
OF CUBA; OR THE MONA PASSAGE WEST OF PUERTO RICO. THE
COAST GUARD HAS FOUND IT MOST ADVANTAGEOUS TO CONCENTRATE
THEIR PATROLS ON THESE CHOKE POINTS, WITH A VIEW TOWARD
BOARDING SUSPECT VESSELS AS THEY HEAD NORTH. THE OBVIOUS
DRAWBACK OF THIS TACTIC IS THAT IN PASSING THROUGH THESE
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STRAITS AND WHILE OTHERWISE PLYING THEIR TRADE, THE
FOREIGN MOTHERSHIPS USUALLY REMAIN ON THE HIGH SEAS WHERE
THEY, EXCEPT UNDER THE CIRCUMSTANCES OUTLINED IN
PARAGRAPH 6 BELOW, ARE NOT SUBJECT TO THE LAW ENFORCEMENT
JURISDICTION OF THE U.S. WITHOUT SPECIFIC AUTHORIZATION
FROM THEIR FLAG STATE.

4. CASES IN WHICH THE COAST GUARD HAS ENCOUNTERED SUSPECT
FOREIGN VESSELS ON THE HIGH SEAS UNDER CONDITIONS WHICH
DO NOT SUBJECT THE VESSEL TO THE LAW ENFORCEMENT JURIS-
DICTION OF THE UNITED STATES HAVE BEEN TREATED ON AN AD
HOC BASIS AS FOLLOWS. THE DEPARTMENT HAS SOUGHT TO
VERIFY THE VESSEL'S CLAIMED NATIONALITY WITH THE PURPORTED
FLAG STATE. IF THE NATIONALITY IS CONFIRMED, WE SEEK
PERMISSION FROM THE FLAG STATE TO BOARD AND TAKE LAW
ENFORCEMENT ACTION ABOARD THE VESSEL. IF EVIDENCE SUPPORTS
A VIOLATION OF U.S. LAWS, THE INITIATIVE INCLUDES A
REQUEST FOR AUTHORIZATION FROM THE DEPARTMENT OF JUSTICE

TO SEIZE THE VESSEL FOR PROSECUTION OR FORFEITURE IN THE
U.S. WHEN IT IS DETERMINED THAT THERE IS EVIDENCE OF A
PROSECUTABLE VIOLATION OF U.S. LAWS, IT IS JUSTICE
DEPARTMENT'S POLICY TO PROSECUTE WHERE APPROPRIATE.
REQUEST IS FOR AUTHORIZATION TO DETAIN THE VESSEL ON
BEHALF OF THE FLAG STATE. THIS LATTER COURSE, THOUGH
SUCCESSFUL IN SEVERAL CASES, HAS BEEN THE SOURCE OF SOME
DIFFICULTY. UNLESS THE SEIZURE TAKES PLACE NEAR THE FLAG
STATE, IT IS NOT POSSIBLE FOR THE COAST GUARD TO DELIVER
THE SEIZED VESSEL TO THAT COUNTRY; DETENTION IN THE U.S.
IS THE ONLY VIABLE ALTERNATIVE. UNDER CURRENT U.S. LAW
AND PROCEDURES, ONCE THE VESSEL IS BROUGHT INTO THE U.S.,
THE ONLY WAY ITS CREW CAN BE TURNED OVER TO THE FLAG
STATE IS THROUGH THE FORMAL EXTRADITION PROCESS. SINCE
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THE FLAG STATE HAS NO KNOWLEDGE OF THE ILLEGAL ACTIVITY

ABOARD THE VESSEL EXCEPT FOR THE INFORMATION FORWARDED TO IT BY THE U.S., IT OFTEN FINDS IT DIFFICULT, IF NOT IMPOSSIBLE, TO SATISFY THE EVIDENTIARY AND DOCUMENTARY REQUIREMENTS FOR PROVISIONAL DETENTION AND EXTRADITION IN A TIMELY MANNER. WITHOUT THE NECESSARY EVIDENCE AND FLAG STATE DOCUMENTATION, THE U.S. IS UNABLE TO HOLD THE CREW OF THE VESSEL BEYOND THE TIME NECESSARY TO PROCESS THEM FOR DEPORTATION. THEREFORE, WE ARE FACED WITH A CATCH-22 SITUATION: WE HAVE SEIZED A VESSEL ON THE HIGH SEAS ON BEHALF OF THE FLAG STATE WHICH AT OUR BEHEST AUTHORIZED US TO DO SO. THEN BECAUSE OF THE INFLEXIBILITY OF THE EXTRA-DITION PROCESS, WE ARE UNABLE TO HOLD THE VESSEL'S CREW FOR THE FLAG STATE BECAUSE IT IS UNABLE TO DOCUMENT FOR US THE REASONS WE ASKED IT TO AUTHORIZE US TO SEIZE THE VESSEL IN THE FIRST PLACE.

5. BECAUSE OF THE GENERAL DISSATISFACTION WITH EXTRA-DITION APPROACH, WE HAVE, IN RECENT CASES, CHOSEN TO FOREGO ANY THOUGHT OF HOLDING THE CREW OF THE VESSEL FOR EXTRA-DITION. RATHER WE HAVE ADDRESSED THE VESSEL ONLY, HOLDING IT FOR FINAL DISPOSITION BY THE FLAG STATE (IN CASES WHERE FORFEITURE OR OTHER DISPOSITION UNDER U.S. LAW IS NOT POSSIBLE). THE CREW IS NOW ROUTINELY TURNED OVER TO INS FOR DEPORTATION PROCEEDINGS. THUS IN OUR INITIAL APPROACH TO THE FLAG STATE, WE SHOULD POINT OUT THAT UNLESS IT HAPPENS TO BE THE STATE TO WHICH CREW MEMBERS ARE DEPORTED, IT WILL NOT GET A CHANCE TO PROSECUTE THEM. IT IS OUR UNDERSTANDING THAT MOST IF NOT ALL FLAG STATES INVOLVED HAVE NO REAL INTEREST IN THE CREW, AND THAT THEIR PRIMARY

CONCERN AND DESIRE IS TO OBTAIN THE VESSEL. IN THIS REGARD WE NOTE THAT MANY OF THE VESSELS INVOLVED ARE OF

MARGINAL VALUE AND PROBABLY ARE NOT WORTH THE FLAG STATE'S TIME AND EFFORT TO RECOVER. ONLY IF DISPOSITION LIMITED OFFICIAL USE
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UNDER U.S. LAW IS NOT POSSIBLE, WE PROPOSE TO LEAVE A DECISION ON THIS UP TO THE FLAG STATE IN EACH INSTANCE. IF IT CHOOSES TO RECOVER THE VESSEL, IT WILL BE EXPECTED TO EXPEDITIOUSLY REMOVE IT FROM U.S. CUSTODY (USUALLY WITHIN 30 DAYS) AND DISPOSE OF IT EITHER BY SALE WITHIN THE U.S. OR REMOVAL TO THE FLAG STATE. ALL COSTS

INCURRED BY THE FLAG STATE IN RECOVERING AND DISPOSING OF THE VESSEL MUST BE BORNE BY THE FLAG STATE. MOREOVER, IF THE VESSEL IS RECOVERED BY THE FLAG STATE, USG EXPECTS TO BE REIMBURSED FROM THE PROCEEDS, IF ANY, FOR ITS EXPENSES IN MAINTAINING CUSTODY OF THE VESSEL PENDING ITS RELEASE TO THE FLAG STATE. IF THE VESSEL IS NOT RECOVERED BY THE FLAG STATE WITHIN THE 30-DAY PERIOD, USG WOULD AUCTION IT

OFF (AS IT DOES IN THE SEIZURE OF DOMESTIC VESSELS), AND, AFTER DEDUCTING THE COSTS RELATED TO STORAGE AND SALE, TURN THE PROCEEDS OVER TO THE GOVERNMENT OF THE FLAG STATE. N.B. DUE TO UNCERTAINTY ON LEGAL ASPECTS OF THE FOREGOING POSTS SHOULD NOT AT THIS STAGE PROMISE RETURN OF THE VESSEL TO FLAG STATE.

6. UNDER CERTAIN CIRCUMSTANCES, THE CURRENT INTERNATIONAL LAW OF THE SEA AUTHORIZES THE U.S. TO EXERCISE LAW ENFORCEMENT JURISDICTION OVER A FOREIGN VESSEL ON THE HIGH SEAS WITHOUT SPECIFIC AUTHORIZATION FROM ITS FLAG STATE. THESE CIRCUMSTANCES INCLUDING BUT NOT LIMITED TO APPLICATION OF THE DOCTRINES OF HOT PURSUIT, CONSTRUCTIVE PRESENCE AND ASSIMILATED STATELESSNESS.

A. HOT PURSUIT IS THE UNIVERSALLY-ACCEPTED AND FREQUENTLY-PRACTICED DOCTRINE WHICH ALLOWS A COASTAL STATE, BY PURSUING AND MAINTAINING CONTACT WITH A FLEEING VESSEL, TO PRESERVE ITS RIGHT TO EXERCISE LAW ENFORCEMENT JURISDICTION LIMITED OFFICIAL USE
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OVER A FOREIGN VESSEL EVEN AFTER IT FLEES BEYOND THE GEOGRAPHICAL AREA (THE 12-MILE CONTIGUOUS ZONE) IN WHICH IT WOULD NORMALLY BE SUBJECT TO THE JURISDICTION OF THE UNITED STATES FOR THE PURPOSE OF ENFORCING U.S. CUSTOMS LAWS.

B. CONSTRUCTIVE PRESENCE IS A CORRELATIVE DOCTRINE WHICH MAKES A FOREIGN VESSEL SUSCEPTIBLE TO HOT PURSUIT (AND THUS TO COASTAL STATE JURISDICTION) EVEN THOUGH IT IS ONE OF ITS BOATS (OR ANOTHER CRAFT WORKING AS A TEAM WITH THE FOREIGN VESSEL AND USING IT AS A MOTHERSHIP) -- NOT THE FOREIGN VESSEL ITSELF -- WHICH VIOLATES THE COASTAL STATE'S LAW.

C. ASSIMILATED STATELESSNESS IS THE PUNITIVE STATUS WHICH MAY BE IMPOSED UPON A VESSEL WHICH WRONGFULLY CLAIMS THE PROTECTION OF MORE THAN ONE COUNTRY IN AN EFFORT TO AVOID THE RESPONSIBILITIES INCUMBENT UPON A VESSEL EXERCISING THE RIGHT OF NAVIGATING ON THE HIGH SEAS.

7. ACTION REQUESTED:

A. POSTS SHOULD OBTAIN COPIES OF HOST LAWS WHICH

DEFINE THE VIOLATIONS OF THAT COUNTRY FOR MARIJUANA AND OTHER DRUGS, SPECIFICALLY INCLUDING POSSESSION WITH INTENT TO DISTRIBUTE, DISTRIBUTION, IMPORTATION, EXPORTATION, AND THE POSSESSION OF THOSE DRUGS ON A VESSEL REGISTERED TO THE HOST COUNTRY, AND CONSPIRACY AND ATTEMPT TO COMMIT THOSE VIOLATIONS. ADDITIONALLY, COPIES SHOULD BE OBTAINED OF ANY LAWS PERTAINING TO THE AUTHORITY OF THAT COUNTRY TO BOARD, SEARCH, SEIZE, AND FORFEIT VESSELS REGISTERED TO

THAT COUNTRY. IF AT ALL POSSIBLE, ENGLISH TRANSLATION OF PERTINENT SECTIONS SHOULD BE MADE. IF NOT, ENGLISH SUMMARY SHOULD BE PROVIDED. IN ADDITION POST SHOULD OBTAIN SAMPLES OF VESSEL DOCUMENTATION AND CREW IDENTIFICATION PAPERS. ALL OF THE FOREGOING MATERIAL SHOULD BE FORWARDED TO DEPT (L/OES).

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B. POSTS SHOULD ESTABLISH LIAISON WITH APPROPRIATE CONTACTS WITHIN HOST GOVERNMENTS AND, USING CONTENT OF THIS CABLE, EXPLAIN PURPOSE AND EXTENT OF COAST GUARD'S MARITIME DRUG INTERDICTION PROGRAM WITH A VIEW TOWARD FACILITATING ACQUISITION OF REQUIRED INFORMATION (I.E., VERIFICATION OF CLAIMED REGISTRY) AND AUTHORIZATION (I.E., PERMISSION TO BOARD AND TAKE LAW ENFORCEMENT ACTION) SHOULD A CASE INVOLVING HOST GOVERNMENT'S VESSELS ARISE PRIOR TO CONTEMPLATED TALKS ON THIS MATTER.

8. FOR LONDON: IN CASE OF THE UK, OUR INTEREST IS IN BELIZ: AND CAYMAN ISLANDS PARTICULARLY, AS WELL AS OTHER CARIBBEAN POSSESSIONS.

9. FOR HAVANA: IN VIEW OF EARLIER TALKS WITH COAST GUARD, WE ARE INCLUDING YOU ON THIS MESSAGE. DEPARTMENT RECOGNIZES THAT IT MAY NOT BE OPPORTUNE TO RAISE THIS ISSUE NOW, NOR IS IT LIKELY THE CUBAN GOVERNMENT WOULD AGREE TO USCG BOARDING ITS VESSELS. HOWEVER, WE WOULD APPRECIATE ANY COMMENTS YOU MAY WISH TO MAKE ON THIS PROBLEM. VANCE

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Message Attributes

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